

### Helena Pretreatment Penalty

1. Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. part 19 authorize the EPA to impose Class I administrative penalties of up to \$23,989 per violation, up to a total of \$59,973, for violations occurring after November 2, 2015, where penalties are assessed on or after January 12, 2022. In the September 2021 administrative penalty complaint, the EPA proposed to assess a penalty of **\$40,000** for the violations alleged below.
2. In determining the amount of the proposed penalty, the EPA considered the **nature, circumstances, extent, and gravity of the violations, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require**, in accordance with section 309(g)(3) of the Clean Water Act, 33 U.S.C. § 1319(g)(3).

Count in Complaint	Information on Violation	Statutory Factors
Count I-A: Failure to Operate Pursuant to Adequate Legal Authority (Legal Authority in An Ordinance)	<p>September 2017 audit noted multiple deficiencies in City’s legal authority.</p> <p>City submitted draft ordinance to EPA in April 2019. In July 2019, EPA indicated it was approvable.</p> <p>City adopted the ordinance in November of 2019 and provided final ordinance for EPA’s public notice on August 11, 2020.</p>	<p>Nature, circumstances, and gravity moderate to high, especially due to inability to enforce Best Management Practices, lack of specific prohibition for toxic gases vapors, and fumes, and absence of authority to halt or prevent discharges presenting endangerment.</p> <p>Extent (duration) high, due to three-year duration.</p>
Count I-B: Failure to Operate Pursuant to Adequate Legal Authority (Legal Authority in An Intergovernmental Agreement)	<p>July 2009 audit noted MOU for Fort Harrison needed to be updated to ensure City had adequate authority to implement pretreatment regulations for that area.</p> <p>City cited Ordinance 6-4-3 on regulating industrial users outside its borders. On 4/12/19, Al Garcia questioned if the City</p>	<p>Nature, circumstances, and gravity moderate to high, because City had no authority to regulate existing contributions of pollutants from the DMA and DVA.</p> <p>Extent (duration) high; due to 45-month duration for DMA and 48-month duration for DVA.</p>

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	<p>could apply its code outside of City boundaries, but stating that the corrective action could be closed out with a written statement from the City Attorney that the ordinance provided authority for the City to implement its pretreatment program on Fort Harrison..</p> <p>Again with reference to 6-4-3, on 2/1/21, Robyn Hanson questioned the legal basis for the City’s code to regulate beyond the City’s jurisdiction, asking if there was a provision in state law or a state statute allowing the City to do so. The City did not respond to this question. Thus, the City elected to demonstrate its authority through an MOU, rather than through ordinances and state law.</p> <p>The City demonstrated legal authority through entering into MOUs with the Department of Military Affairs (July 26, 2021) and the Department of Veterans Affairs (November 9, 2021).</p>	
Count II-A: Failure to Include All Required Elements in SIU Permits (DIP IU Permit)	September 2017 audit noted the DIP permit improperly allowed for administrative extensions; did not include a Total Toxic Organics limit, although this limit was required by 40 C.F.R. § 433.17(a); allowed for grab sampling	Nature, circumstances, and gravity moderate to high, especially due to lack of an effluent limit for one pollutant, lack of defensible rationale for six other pollutant limits, and requiring only grab sampling.

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	<p>with no support for how this would be representative of the discharge; and for six pollutants included limits without a basis in either the City's local limits or the EPA's categorical standards.</p> <p>City modified the DIP permit August 11, 2020.</p>	<p>Extent (duration) high, due to approximately three years' duration.</p>
<p>Count II-B: Failure to Include All Required Elements in SIU Permits (MRL IU Permit)</p>	<p>September 2017 audit noted that allowed for sampling to occur before, not during the discharge to the sewer.</p> <p>On November 25, 2020, EPA advised the City that the MRL permit improperly allowed for administrative extensions; and did not include all conditions required by EPA regulations or the City's MPDES permit.</p> <p>The City corrected some, but not all, of these deficiencies by 1/1/21.</p> <p>On 4/29/21, via a revised proposed AOC, the EPA advised the City that not all MRL permit deficiencies had been corrected by the 1/1/21 permit reissuance.</p>	<p>Nature, circumstances, and gravity moderate for all but the permit allowing sampling to occur before, and not during, the discharge. For that, it is moderate to high, inasmuch as it demonstrates not only lack of a required permit condition but also indicates that the City was not identifying the character and volume of pollutants contributed to its sewer and also was not properly analyzing self-monitoring reports. (See Counts IV and VI, below.)</p> <p>Extent (duration) of permit allowing sampling to occur before, not during discharge: high, due duration of approximately 40 months.</p> <p>Extent (duration) of other permit deficiencies low (for those corrected by 1/1/21) to moderate (for those corrected by 6/28/21).</p>

Subject to Federal Rule of Evidence 408 and 40 C.F.R. § 22.22(a)(1) – for settlement purposes only

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	On 6/28/21, the City reissued the permit, with the remaining deficiencies having been corrected.	

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Count III: Failure to Implement its Procedure to Identify and Locate IUs	<p>September 2017 audit noted City's IU inventory had not been updated or maintained.</p> <p>City submitted updated IU survey procedures to the EPA on July 23, 2020. The City submitted a report on its implementation procedures to the EPA on March 1, 2022.</p>	<p>Nature, circumstances, and gravity moderate to high.</p> <p>Extent high, due to 4 ½-year duration (subtracting two months due to COVID-based extension).</p> <p>History of same violation, based on 2009 compliance order.</p>
Count IV: Failure to Identify Character and Volume of Pollutants Contributed to POTW	<p>September 2017 audit noted that under its City-issued permit, MRL was collecting samples at a location other than its monitoring point.</p> <p>On 6/28/21, the City reissued the MRL permit, with this deficiency having been corrected.</p>	<p>Nature, circumstances, and gravity moderate to high. (See Count II.B, above, and Count VI, below.)</p> <p>Extent (duration) of permit allowing sampling to occur before, not during discharge: high, due to duration of approximately 40 months.</p> <p>For penalty purposes, even though allowing an IU to sample at a location other than its discharge is a violation of more than one regulation, it is counted as only one violation.</p>

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Count V: Failure to Implement Procedure to Notify IUs of Applicable Pretreatment Standards and Requirements	<p>September 2017 audit noted the City needed to notify IUs of applicable Pretreatment Standards.</p> <p>City provided EPA its IWS procedure on August 27, 2020. The procedure included notification. The City demonstrated it had implemented its notification procedures by February 25, 2022.</p>	<p>Nature, circumstances, and gravity low to moderate.</p> <p>Extent (duration) high, due to duration of approximately 51 months (subtracting two months due to COVID-based extension).</p>
Count VI: Failure to Analyze Self-Monitoring Report	As noted above (Counts II.B and IV), data from MRL was taken from a location other than the discharge to the City sewer.	<p>Nature, circumstances, and gravity moderate to high. (See Counts II.B and IV, above.)</p> <p>Extent (duration) of permit allowing sampling to occur before, not during discharge: high, due duration of approximately 40 months.</p> <p>For penalty purposes, even though allowing an IU to sample at a location other than its discharge is a violation of more than one regulation, it is counted as only one violation.</p>

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<p>Count VII: Failure to Sample, Analyze, and Conduct Surveillance of IUs and Failure to Implement Procedures to Investigate Noncompliance</p>	<p>September 2017 audit noted that the City's inspection reports for DIP and MRL were inadequate to determine compliance, because they were not based on current information; that the City had failed to perform independent pH sampling at DIP; that the City sampled DIP in a manner that was not representative of the discharge; that the City did not evaluate DIP's safety data sheets sufficiently to determine whether DIP discharged total toxic organics.</p> <p>City's sampling and analysis plan provided to EPA on February 28, 2019 had some deficiencies. Corrected plan was provided November 2, 2021.</p>	<p>Nature, circumstances, and gravity moderate to high for inspection violations and low for sampling plan violation.</p> <p>Extent (duration) low for the inspection-related violations and moderate for sampling plan violation (29 months).</p>

Count VIII: Failure to Update Local Limits	<p>2009 audit noted that City had not updated its local limits since 2002 and that City would need to update its local limits upon renewal of its NPDES permit.</p> <p>NPDES permit was renewed in 2012. In 2013, the City indicated its local limits needed to be updated.</p> <p>City submitted draft local limits to EPA on April 21, 2016 and November 21, 2016. Although the City indicated it would update its ordinance and submit it with a final draft of its local limits, it did not do so.</p> <p>2017 audit noted that the City was under an ongoing obligation to develop local limits as necessary and to enforce them effectively.</p> <p>City submitted next draft of local limits in February 2019. EPA provided comments in April 2019.</p> <p>On July 8, 2021, the City submitted updated local limits. On August 5, 2021, Al Garcia notified the City he would recommend that EPA management approve this submission as a substantial program modification. On October 8, 2021, the City notified the EPA the local</p>	<p>Nature, circumstances, and gravity high.</p> <p>Extent (duration) high, due to five-year duration.</p>
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	limits had been adopted, and on November 29, 2021, the City Attorney provided the requisite attorney's statement. Following a public notice period, the EPA approved the revised local limits on January 24, 2022.	